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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,710	12/14/2001	Jan Bertrem	CM2147M	9841

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EXAMINER

MRUK, BRIAN P

ART UNIT PAPER NUMBER

1751

DATE MAILED: 12/05/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/020,710

Applicant(s)

BERTREM ET AL.

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

1. The examiner makes of record that the phrase "A cleaning composition suitable for cleaning a surface" in instant claims 1 and 2 sets forth an intended use of the composition without adding structure. Therefore, since the preambles of instant claims 1 and 2 do not breath life and meaning into the claims, the surfaces recited in instant claims 1-2 and 5-6 are being treated as a statement of intended use and not as a limitation, and thus are not accorded any patentable weight. See **MPEP 2111.02**.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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4. The use of the trademarks Luvitec VP155K18P (page 5, lines 17-18 and page 49, line 10); Luvitec Quat 73W (page 5, lines 23-24); copolymer 845 (page 6, line 22); Gafquat 734 (page 6, line 22); Gafquat 755 (page 6, line 23); Luviquat (page 6, line 24); polyquaternium-11 (page 7, line 2); Sokalan HP 165 (page 8, line 27); Sokalan HP 12 (page 8, line 27); Luviskol (page 9, line 23); Keltrol RD (page 9, line 34); Kelzan S (page 9, line 34); Kelzan T (page 9, line 35); Jeffamine (page 11, line 16); Hostapur SAS (page 19, line 9); Witconate Nas 8 (page 19, line 10); Nansa (page 19, line 13); Akyposoft 100NV (page 20, line 13); Amonyl 265 (page 22, line 3); Empigen BB/L (page 22, lines 4-5); Varion CAS sulfobetaine (page 22, lines 10-11); Mirataine H2C-HA (page 22, line 14); Plurafac (page 23, lines 29 and 32); Genapol (page 23, line 29); Symperonic (page 23, line 30); Genapol L 2.5 NR (page 23, line 32); ssEDDS (page 26, line 12); Trilon FS (page 26, line 23); Alcalase, Savinase, Primase, Durazym, Esperase, Maxtase, Maxacal, Maxapem, Opticlean and Optimase (page 30, lines 30-33); Rapidase, Termamyl and Duramyl (page 31, lines 5-6); Lipolase (page 31, line 28); Isofol, Isofol 12 and Isofol 16 (page 33, lines 30-31); Aerosil (page 34, line 35); n_BPP (page 36, line 32); sodium metaborate and Borax (page 38, line 14); Citric acid (page 38, line 25); carbopol (page 39, line 20); Nipanox S1 (page 40, lines 1-2); Protectol PP and Protectol GDA (page 43, lines 26-27) have been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Objections

5. Claims 2-15 are objected to because of the following informalities: A comma should be inserted after the phrase "to render the surface hydrophilic" in instant claim 2 for grammatical purposes. The phrase "any plastics" in instant claim 5 should be amended to recite "plastic" for clarification purposes, since the genus "plastic" covers all species of plastics. Appropriate correction is required.

6. Claim 3 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The examiner notes that the instant specification defines the term "durably" to mean that the hydrophilic surface modification is maintained for at least one rinse (see page 4, lines 27-31 of the instant specification). Thus, when claim 3 depends from claim 2, claim 3 fails to further limit claim 2.

Furthermore, instant claim 3 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 2 when claim 3 depends from claim 1. The examiner notes that the only difference between claims 1 and 2 is that claim 1 recites that "the

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polymer is capable of modifying the surface”, whereas claim 2 recites that “the polymer is capable of **durably** modifying the surface”. The examiner notes that the instant specification defines the term “durably” to mean that the hydrophilic surface modification is maintained for at least one rinse (see page 4, lines 27-31 of the instant specification). Thus, when claim 3 depends from claim 1, claims 2 and 3 are duplicate claims. “When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim”. See MPEP § 706.03(k). Appropriate correction and/or clarification is required.

7. Instant claims 4 and 6-15 are objected to for being dependent upon a claim with the above addressed claim objection (i.e. claim 2).

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. The phrase “less than about” in instant claims 1 and 2 renders the claims vague and indefinite. The phrase “less than about” renders the claims indefinite, since one of

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ordinary skill in the art would not be able to ascertain the metes and bounds of the phrase "less than about". It is unclear what values are encompassed by the phrase "less than about". The examiner suggests that this phrase should be changed to "less than". "Claims reciting "less than about" are invalid for indefiniteness where there was close prior art and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term about." See MPEP 2173.05(b). Appropriate correction and/or clarification is required.

11. The phrase "measured according to the rinse test method described herein" in instant claims 3 and 4 renders the claims vague and indefinite, since it is unclear what method steps are required according to the rinse test method in instant claims 3 and 4. The examiner suggests that instant claims 3 and 4 should be amended to recite the rinse test method steps in order for claims 3 and 4 to be considered definite. Appropriate correction and/or clarification is required.

12. Regarding instant claim 5, the phrase "especially chrome metal" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase "especially" are part of the claimed invention. The examiner suggests that the phrase "especially chrome metal" should be removed from instant claim 5, since the genus "metal" recited in instant claim 5 includes the species "chrome metal". Appropriate correction and/or clarification is required.

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13. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. In the present instance, claim 12 recites the broad recitation "additionally comprising a solvent", and the claim also recites "preferably a C1-5 alcohol" which is the narrower statement of the range/limitation. Appropriate correction is required.

14. Instant claims 6-11 and 13-18 are rejected to under 35 U.S.C. 112, second paragraph, for being dependent upon a claim with the above addressed 112 problem.

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. Claims 1-10 and 16 are rejected under 35 U.S.C. 102(a) as being anticipated by Gordon et al, EP 859,046 A1.

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Gordon et al, EP 859,046 A1, discloses a liquid hard surface cleaning composition having a pH above 9 and comprising a copolymer of N-vinylpyrrolidone and an alkylenically unsaturated monomer (see abstract). Specifically, note Examples A-G, I and J, which disclose liquid hard surface cleaning compositions comprising between 0.3-1.0% by weight of Polyquaternium-11 (i.e. a quaternized copolymer of vinyl pyrrolidone and dimethyl aminoethylmethacrylate), per the requirements of instant claims 1-9, and various surfactants, per the requirements of instant claim 10. Furthermore, note that Gordon et al discloses that the compositions are used to wash hard surfaces by contacting the surface with the composition without any additional rinsing or drying, per the requirement of instant 16. Although Gordon et al is silent with respect to the "modifying the surface to render it hydrophilic, providing a contact angle between water and the surface of less than about 50 degrees" limitations in instant claims 1-2 and the "adhering to the surface for at least 1-5 rinses" limitations in instant claims 3-4, the examiner asserts that the Polyquaternium-11 polymer disclosed by Gordon et al would inherently meet these limitations, absent a showing otherwise. Furthermore, the examiner notes that applicant's own disclosure on page 7, lines 1-2 states that Polyquaternium-11 is a preferred surface substantive polymer which is capable of meeting the limitations of instant claims 1-4. Therefore, instant claims 1-10 and 16 are anticipated by Gordon et al, EP 859,046 A1.

17. Claims 1-10 and 16-18 are rejected under 35 U.S.C. 102(a) as being anticipated by Pace et al, EP 919,610 A1.

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Pace et al, EP 919,610 A1, discloses a liquid acidic composition for cleaning a hard surface comprising an acid, 0.001-20% by weight of a polysaccharide polymer and 0.001-20% by weight of a vinylpyrrolidone homopolymer or copolymer (page 3, lines 24-30). Specifically, note Examples 13-18, which discloses hard surface cleaning compositions comprising 0.01-0.2% by weight of GAFQUAT 755 (i.e. a vinylpyrrolidone/dialkylaminoalkyl methacrylate copolymer), per the requirements of instant claims 1-9, and various surfactants (i.e. Lutensol TO 6 and Empigen BB/L), per the requirements of instant claim 10. Furthermore, note that Pace et al discloses that the compositions are used to clean hard surfaces by dispensing the compositions from a spray bottle, rinsing the surface with water 30 seconds after application, and leaving the surface to dry (page 13, lines 20-32), per the requirements of instant claims 16-18. Although Pace et al is silent with respect to the "modifying the surface to render it hydrophilic, providing a contact angle between water and the surface of less than about 50 degrees" limitations in instant claims 1-2 and the "adhering to the surface for at least 1-5 rinses" limitations in instant claims 3-4, the examiner asserts that the GAFQUAT 755 polymer disclosed by Pace et al would inherently meet these limitations, absent a showing otherwise. Furthermore, the examiner notes that applicant's own disclosure on page 6, lines 21-24 states that GAFQUAT 755 is a preferred surface substantive polymer which is capable of meeting the limitations of instant claims 1-4. Therefore, instant claims 1-10 and 16-18 are anticipated by Pace et al, EP 919,610 A1.

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18. Claims 1-10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Willey et al, WO 97/33963.

Willey et al, WO 97/33963, discloses a glass cleaning composition comprising an amine oxide polymer, a solvent and surfactants (page 2, lines 2-8). Specifically, note Example II, Formulas 3-7, which disclose compositions comprising 0.1-0.3% by weight of PVNO (i.e. a polyvinyl pyridine N-oxide polymer), per the requirements of instant claims 1-9, various surfactants, per the requirements of instant claim 10, and isopropanol/ethanol, per the requirements of instant claim 12. Although Willey et al is silent with respect to the "modifying the surface to render it hydrophilic, providing a contact angle between water and the surface of less than about 50 degrees" limitations in instant claims 1-2 and the "adhering to the surface for at least 1-5 rinses" limitations in instant claims 3-4, the examiner asserts that the PVNO polymer disclosed by Willey et al would inherently meet these limitations, absent a showing otherwise. Furthermore, the examiner notes that applicant's own disclosure on page 7, lines 4-7 states that PVNO is a preferred surface substantive polymer which is capable of meeting the limitations of instant claims 1-4. Therefore, instant claims 1-10 and 12 are anticipated by Willey et al, WO 97/33963.

19. Claims 1-10, 12, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Fusiak et al, WO 95/00611.

Fusiak et al, WO 95/00611, discloses a hardwood floor cleaning composition comprising 0.1-5% by weight of an alkyl pyrrolidone, 0.1-5% by weight of an anionic or

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nonionic surfactant, 1-5% by weight of a shine booster, such as a vinylpyrrolidone copolymer, 0.5-2% by weight of a film former, and 85-95% by weight of a water/alcohol mixture (see abstract). Specifically, note Table 3, Examples 1 and 3-4, which discloses cleaning compositions comprising 2.5-5% by weight of GAFQUAT 755 (i.e. a vinylpyrrolidone/dialkylaminoalkyl methacrylate copolymer), per the requirements of instant claims 1-9, sodium lauryl sulfate, per the requirements of instant claim 10, and isopropanol, per the requirements of instant claim 12. Furthermore, note that Fusiak et al discloses that the compositions are used to clean a hardwood floor comprising spraying the composition onto the wood, followed by damp mopping/sponging the wood surface, and air drying (page 3, lines 14-17 & page 4, lines 14-30), per the requirements of instant claim 16 and 18. Although Fusiak et al is silent with respect to the "modifying the surface to render it hydrophilic, providing a contact angle between water and the surface of less than about 50 degrees" limitations in instant claims 1-2 and the "adhering to the surface for at least 1-5 rinses" limitations in instant claims 3-4, the examiner asserts that the GAFQUAT 755 polymer disclosed by Fusiak et al would inherently meet these limitations, absent a showing otherwise. Furthermore, the examiner notes that applicant's own disclosure on page 6, lines 21-24 states that GAFQUAT 755 is a preferred surface substantive polymer which is capable of meeting the limitations of instant claims 1-4. Therefore, instant claims 1-10, 12, 16 and 18 are anticipated by Fusiak et al, WO 95/00611.

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20. Claims 1-10, 12, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Aronson et al, U.S. Patent No. 4,368,146.

Aronson et al, U.S. Patent No. 4,368,146, discloses a dishwashing composition comprising an anionic/nonionic surfactant, and a copolymer of N-vinylpyrrolidone and dimethylaminoethylmethacrylate (see abstract). Specifically, note Example 1, Tables 1-3, which disclose a dishwashing detergent composition comprising 0.21-10% by weight of GAFQUAT-734 (i.e. a copolymer of N-vinylpyrrolidone and methylaminoethylmethacrylate), per the requirements of instant claims 1-9, various surfactants, per the requirements of instant claim 10, and ethanol, per the requirements of instant claim 12. Furthermore, note that Aronson et al discloses that the dishes are washed by applying the detergent to the dishes for 1 to 3 minutes, followed by rinsing with water and air drying, per the requirements of instant claims 16-17. Although Aronson et al is silent with respect to the "modifying the surface to render it hydrophilic, providing a contact angle between water and the surface of less than about 50 degrees" limitations in instant claims 1-2 and the "adhering to the surface for at least 1-5 rinses" limitations in instant claims 3-4, the examiner asserts that the GAFQUAT-734 polymer disclosed by Aronson et al would inherently meet these limitations, absent a showing otherwise. Furthermore, the examiner notes that applicant's own disclosure on page 6, lines 21-24 states that GAFQUAT-734 is a preferred surface substantive polymer which is capable of meeting the limitations of instant claims 1-4. Therefore, instant claims 1-10, 12, 16 and 17 are anticipated by Aronson et al, U.S. Patent No. 4,368,146.

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21. Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Spruyt et al, WO 97/03180.

Spruyt et al, WO 97/03180, discloses a packaged foaming composition comprising 0.24-0.34% by weight of PVNO (i.e. a polyvinyl pyridine N-oxide polymer), per the requirements of instant claims 1-9, various surfactants, per the requirements of instant claim 10, phosphonate, per the requirements of instant claim 11, ethanol, per the requirements of instant claim 12, a soil release polymer, per the requirements of instant claim 13, and calcium chloride, per the requirements of instant claim 14. Although Spruyt et al is silent with respect to the "modifying the surface to render it hydrophilic, providing a contact angle between water and the surface of less than about 50 degrees" limitations in instant claims 1-2 and the "adhering to the surface for at least 1-5 rinses" limitations in instant claims 3-4, the examiner asserts that the PVNO polymer disclosed by Spruyt et al would inherently meet these limitations, absent a showing otherwise. Furthermore, the examiner notes that applicant's own disclosure on page 7, lines 4-7 states that PVNO is a preferred surface substantive polymer which is capable of meeting the limitations of instant claims 1-4. Therefore, instant claims 1-14 are anticipated by Spruyt et al, WO 97/03180.

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al, EP 859,046 A1.

Gordon et al, EP 859,046 A1, is relied upon supra as disclosing a liquid hard surface cleaning composition having a pH above 9 and comprising a copolymer of N-vinylpyrrolidone and an alkylenically unsaturated monomer (see abstract). It is further taught by Gordon et al that the hard surface cleaning composition may optionally contain a chelating agent (page 5, lines 45-50), per the requirements of instant claim 11, a solvent (page 5, lines 45-50), per the requirements of instant claim 12, an antiresoiling ingredient, such as a vinylpyrrolidone homopolymer (page 10, lines 15-45), per the requirements of instant claim 13, and a divalent metal ion, such as Zn^{2+} (page 11, lines 21-26), per the requirements of instant claims 14 and 15. Although Gordon et al generally teaches the inclusion of a chelating agent, a solvent, an antiresoiling ingredient, such as a vinylpyrrolidone homopolymer, and a divalent metal ion, such as Zn^{2+} , in their hard surface cleaning composition, the reference does not require these components with sufficient specificity to constitute anticipation.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a hard surface cleaning composition, as taught by Gordon et al, which contained a chelating agent, a solvent, an antiresoiling ingredient, such as a vinylpyrrolidone homopolymer, and a divalent metal ion, such as Zn^{2+} , because such hard surface cleaning compositions fall within the scope of those taught by Gordon et al. Therefore, one of ordinary skill in the art would have had a reasonable

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expectation of success, because such a hard surface cleaning composition containing a chelating agent, a solvent, an antiresoiling ingredient, such as a vinylpyrrolidone homopolymer, and a divalent metal ion, such as Zn^{2+} , is expressly suggested by the Gordon et al disclosure and therefore is an obvious formulation.

24. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pace et al, EP 919,610 A1.

Pace et al, EP 919,610 A1, is relied upon supra as disclosing a liquid acidic composition for cleaning a hard surface comprising an acid, 0.001-20% by weight of a polysaccharide polymer and 0.001-20% by weight of a vinylpyrrolidone homopolymer or copolymer (page 3, lines 24-30). It is further taught by Pace et al that the hard surface cleaning composition may optionally contain a chelating agent and a solvent (page 8, lines 33-35), per the requirements of instant claims 11 and 12. Although Pace et al generally teaches the inclusion of a chelating agent and a solvent in their hard surface cleaning composition, the reference does not require these components with sufficient specificity to constitute anticipation.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a hard surface cleaning composition, as taught by Pace et al, which contained a chelating agent and a solvent, because such hard surface cleaning compositions fall within the scope of those taught by Pace et al. Therefore, one of ordinary skill in the art would have had a reasonable expectation of success, because such a hard surface cleaning composition containing a chelating agent and a

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solvent is expressly suggested by the Pace et al disclosure and therefore is an obvious formulation.

Double Patenting

25. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

26. Claims 1-7, 9-11 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 10/020,600. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 10/020,600, claims a similar composition comprising a chelating agent, an anionic surfactant, a soil release polymer, and a surface substantive polymer (see claims 1-8 of copending Application No. 10/020,600), as required by applicant in instant claims 1-7, 9-11 and 13. Although copending Application No. 10/020,600 is silent with respect to the "modifying the surface to render it hydrophilic, providing a contact angle between water

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and the surface of less than about 50 degrees" limitations in instant claims 1-2 and the "adhering to the surface for at least 1-5 rinses" limitations in instant claims 3-4, the examiner asserts that the surface substantive polymer disclosed by copending Application No. 10/020,600 would inherently meet these limitations, absent a showing otherwise. Although copending Application No. 10/020,600 discloses a similar composition, they are not identical, because copending Application No. 10/020,600 requires a combination of a chelating agent, an anionic surfactant, and a soil release polymer that is not required in the instant invention. Therefore, claims 1-7, 9-11 and 13 of the instant invention are an obvious formulation in view of claims 1-8 of copending Application No. 10/020,600.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (**Before Final**) and (703) 872-9311 (**After Final**).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BPM
Brian Mruk
December 2, 2002

Brian P. Mruk
BRIAN P. MRUK
PATENT EXAMINER
TECH CENTER 1700